

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DICK COWELL AND CYNTHIA COWELL	§	
	§	
VS.	§	C.A. NO. 4:16-cv-1528
	§	(JURY)
STATE FARM LLOYDS	§	

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

STATE FARM LLOYDS (hereinafter, “State Farm”), Defendant in the above-styled and numbered cause, files this Notice of Removal of the present action from the 334th Judicial District Court of Harris County, Texas, to the United States District Court for the Southern District of Texas, Houston Division. In connection with this Notice of Removal, State Farm would respectfully show unto the Court as follows:

**I.
PROCEDURAL BACKGROUND**

1. Plaintiffs Dick Cowell and Cynthia Cowell filed this action on April 7, 2016 against State Farm Lloyds in 334th Judicial District Court of Harris County, Texas. That case was docketed under cause number 2016-22316 (the “State Court Action”).
2. State Farm was served with process on May 2, 2016, and filed an answer on May 19, 2016.
3. State Farm files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 334th Juridical District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.
4. Plaintiffs’ Original Petition filed in the State Court Action included a jury demand.

II.
NATURE OF SUIT

5. This lawsuit involves a dispute over the alleged non-payment of insurance benefits and the handling of Plaintiffs' claim for damages allegedly caused by a hailstorm or windstorm "on or around April 19, 2015." Petition at ¶ 8. Plaintiffs assert causes of action for breach of contract, breach of the duty of good faith and fair dealing, fraud, conspiracy to commit fraud, and violations of the Texas Insurance Code.

III.
BASIS OF REMOVAL

6. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all parties and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

7. At the time this action was commenced, Plaintiffs Dick Cowell and Cynthia Cowell were, and still are, residents of Harris County, Texas. Petition at ¶ 3.

8. The citizenship of an unincorporated association is determined by the citizenship of each member of the entity, not by the state where the entity is organized. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir.2008); *see also, e.g., See Royal Ins. Co. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members); *Griggs v. State Farm Lloyds*, 181 F.3d 694, 698 (5th Cir. 1999) (finding that State Farm Lloyds is a citizen of Illinois); *Alonzo v. State Farm Lloyds*, No. SA-06-SA-0326-XR, 2006 WL 1677767, at *1 (W.D. Tex. June 12, 2006) (State Farm Lloyds held to be diverse from Texas plaintiffs); *Caballero v. State Farm Lloyds*, No. CA-C-03-266, 2003 WL 23109217, at *1 (S.D. Tex. Oct. 31, 2003) (same); *Rappaport v. State Farm Lloyds*, No. 3:97-CV-2747, 1998 WL 249211, at *2 (N.D. Tex. May 8, 1998) (same).

9. State Farm is an association of individual underwriters authorized to conduct business in Texas as a Lloyd's plan insurer as defined and set out in Chapter 941 of the Texas Insurance Code. At the time this action commenced, State Farm was, and still is, an unincorporated insurance association whose underwriters were, and still are, citizens of states other than Texas. Accordingly, State Farm is not a citizen of the State of Texas. *See* Verification below.

10. Plaintiffs' Original Petition expressly alleges damages in excess of \$100,000 satisfying the "amount in controversy" requirement of 28 U.S.C. § 1332(a). Petition at ¶ 70.

IV. REMOVAL PROCEDURES

11. State Farm was served with process on May 2, 2016. This Notice of Removal is being filed on May 31, 2016. Accordingly, this Notice of Removal is timely filed within 30 days of when Defendant received a copy of Plaintiffs' Original Petition and within one year of the commencement of this suit. *See* 28 U.S.C. § 1446(b).

12. Plaintiffs filed this action in Harris County, Texas. The Houston Division of the Southern District of Texas encompasses Harris County, Texas. *See* 28 U.S.C. § 124(b)(2). Thus, venue is proper because this district and division embrace the place where the State Court Action is pending. *See* 28 U.S.C. § 1441(a).

13. All information and documents required by 28 U.S.C. § 1446(a) and by Local Rule 81 to be filed with this Notice of Removal are attached and indexed in Exhibit A.

14. A copy of this Notice of Removal will be filed with the Harris County District Clerk's office and served on the Plaintiffs promptly. *See* 28 U.S.C. § 1446(d).

V.
PRAYER

State Farm Lloyds respectfully requests that the above-styled action now pending in the 334th Judicial District Court of Harris County, Texas, be removed to this Honorable Court pursuant to the Court's diversity jurisdiction, that upon final trial, judgment be rendered that Plaintiffs take nothing by their suit against State Farm Lloyds, and for such other and further relief to which State Farm Lloyds may be justly entitled.

Respectfully submitted,

GERMER PLLC

By:  _____
Dale M. "Rett" Holiday
State Bar No. 00792937
Federal I.D. No. 21382
Three Allen Center
333 Clay Street
Houston, Texas 77002
Telephone: (713) 650-1313
Facsimile: (713) 739-7420
rholiday@germer.com

**ATTORNEY-IN-CHARGE FOR DEFENDANT,
STATE FARM LLOYDS**

OF COUNSEL:

GERMER PLLC

Gregory M. Howard
State Bar No. 24042989
Federal I.D. No. 619850
Three Allen Center
333 Clay Street, Suite 4950
Houston, Texas 77002
Telephone: (713) 650-1313
Facsimile: (713) 739-7420
Email: ghoward@germer.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel pursuant to the Federal Rules of Civil Procedure on this the 31st day of May, 2016.

Bill Voss
Scott Hunziker
THE VOSS LAW FIRM, P.C.,
26619 Interstate 45 South
The Woodlands, Texas 77380

VIA CM/ECF & FACSIMILE



DALE M. "RETT" HOLIDY